

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	Criminal No. 04-10167-RCL
v.)	
)	
TIMOTHY HERLIHY)	
Defendant.)	

**GOVERNMENT'S MOTION TO REVOKE DEFENDANT'S RELEASE AND OPPOSITION
TO DEFENDANT'S MOTION TO MODIFY CONDITIONS OF RELEASE**

The United States of America, by its attorneys, Michael J. Sullivan, United States Attorney for the District of Massachusetts, and David G. Tobin, Assistant U.S. Attorney, moves this Honorable Court to revoke the Order Setting Conditions of Release issued by this Court (C.J. Bowler) on April 20, 2004. The United States further requests that this Court deny the Defendant's Motion to Modify Conditions of Release. In support of its motion, the United States avers the following:

1. Upon the joint recommendation of the United States and defense counsel, the defendant was released to the Gosnold Treatment Facility by the Court (C.J. Bowler) on April 20, 2005.

2. Upon the defendant's completion of the substance abuse treatment program at the Gosnold Treatment Facility, the Court ordered the defendant to reside with his father.

3. On June 28, 2005, the undersigned attorney for the United States received information from Judy Oxford of Pretrial Services that the defendant had tested positive for the presence of heroin on three occasions.

4. The defendant pled guilty on April 6, 2005 and is scheduled to be sentenced by the Court (J. Lindsay) on July 20, 2005.

Argument

The conditions of release set by the Court on April 20, 2005 included that the defendant "refrain from any use or unlawful possession of a narcotic drug and other controlled substances ... unless prescribed by a licensed medical practitioner." See Order Setting Conditions of Release attached as Exhibit A.

The defendant is in violation of the conditions of release set by the Court. The defendant's continued use of heroin, despite completing the substance abuse program at the Gosnold Treatment Facility, strongly suggests that he is a threat to himself and at substantial risk of committing additional criminal acts. As a result, The United States respectfully asks this Court to revoke the Order Setting Conditions of Release and order the defendant held until sentencing on July 20, 2005.

Conclusion

For the reasons stated above, the United States asks this Honorable Court to deny the Defendant's Motion to Modify Conditions of Release and allow the government's Motion to Revoke the Defendant's Release.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ David G. Tobin
DAVID G. TOBIN
Assistant U.S. Attorney

Dated: June 28, 2005